

EXHIBIT 8

AMERICAN ARBITRATION ASSOCIATION

HERBERT M. GOTTLIEB,
Claimant,
vs.
NACIO SYSTEMS, INC.,
formerly INTERACTIVE
HOLDINGS GROUP, INC.,
Respondent.

CERTIFIED COPY

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TRANSCRIPT OF PROCEEDINGS

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October 16, 2006

Taken at the location of:
American Arbitration Association
One Sansome Street, 16th Floor
San Francisco, California

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Reported by
JOAN T. GRIER, CSR #8958

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A P P E A R A N C E S

ARBITRATOR: JOHN KAGEL, ESQUIRE

P.O. Box 50787

Palo Alto, California 94303

For Claimant:

MCNEIL, SILVEIRA, RICE & WILEY

55 Professional Center Parkway, Suite A

San Rafael, California 94903

(415) 472-3434

By: Mark J. Rice, Attorney at Law

For Respondent:

DONAHUE, GALLAGHER, WOODS

300 Lakeside Drive, Suite 1900

Oakland, CA 94612

(510) 451-0544

By: William H. Green, Attorney at Law

ALSO PRESENT: Herbert M. Gottlieb

Murray Goldenberg

1 respondent?

2 MR. GREEN: No. Maybe we can take a two-minute
3 break and let me talk to Mr. Rice about something.

4 THE ARBITRATOR: Go ahead.

5 Off the record.

6 (Recess taken from 10:29 to 11:12 a.m.)

7 THE ARBITRATOR: Call your witness, Mr. Rice.

8 (Discussion off the record.)

9 MR. RICE: I'm going to call Mr. Goldenberg
10 first.

11 THE ARBITRATOR: Mr. Goldenberg, would you come
12 forward, please, and have a seat.

13 Do you wish the witnesses sworn?

14 MR. RICE: Yes, please.

15 (Witness sworn.)

16 → MURRAY GOLDENBERG,

17 Called as an adverse witness by the Claimant,
18 testified as follows:

19 THE ARBITRATOR: Your name, sir.

20 THE WITNESS: Murray Goldenberg.

21 THE ARBITRATOR: Mr. Rice, I assume you're
22 calling Mr. Goldenberg as an adverse witness.

23 MR. RICE: I am calling him as an adverse
24 witnesses.

25 THE ARBITRATOR: Mr. Goldenberg, you've been

1 MR. RICE: Q. How many -- at the time of
2 Mr. Gottlieb's departure, what were the total number of
3 employees within Nacio?

4 A. Within Nacio?

5 Q. Yes.

6 A. ~~Excluding our after-hours staff, probably 25.~~

7 Q. Okay. Can you turn your attention to Exhibit F
8 again. And we're almost concluded. Where Mr. -- and I
9 know you indicated you weren't sure whether you received
10 this or not, but let me see if I can refresh your
11 recollection.

12 He writes:

13 "In light of the renewal I am also
14 concerned about the reduction of staff
15 under me, and whether you plan to
16 increase or change the duties of my
17 position. Duty changes require my
18 approval under the employment contract.
19 I need to know if any are planned.
20 Could you please discuss with me your
21 plans for my duties."

22 Do you have a recollection now of having heard
23 that you did receive this e-mail?

24 A. No, I don't have a recollection of receiving
25 this e-mail, but I do recollect Herb and I having a

1 discussion, and I made it very clear to him that his
2 duties were unchanged; that he joined principally to
3 generate sales for that division.

4 We were unable to generate sales to anybody's
5 satisfaction because the software was old and worn, and
6 it had to be refreshed. And Herb worked with one of our
7 other folks to make a lot of good changes and put a lot
8 of good things in place.

9 And it was our intention to have him continue
10 generating sales and doing exactly that without the
11 responsibilities of worrying about accounting and so on,
12 which is what I agreed I would look after.

13 Q. But Herb did complain that he felt that he was
14 being undersupported and undermined by your resource
15 changes?

16 A. He didn't complain about that specifically. We
17 had discussions from time to time about where we were
18 going and what we wanted to do with Attest, but he never
19 complained that he was being undermined.

20 Q. On Friday when we had discussions, you
21 complained that Mr. Gottlieb had engaged in some behavior
22 you thought was improper. Do you recall that?

23 A. Yes, I do.

24 Q. Are you claiming that that precludes you or
25 entitles you not to pay commissions that are due?

1 A. No. Absolutely not. One has nothing to do
2 with the other. I believe we owe him the money for the
3 commissions. And given time, we will pay it.

4 MR. RICE: Okay. I'd like to introduce the
5 UCC-1 as -- we marked my brief as 2, so that would be
6 "U." I'm introducing it for the truth of the matter
7 asserted as an operative document.

8 THE ARBITRATOR: Any objection?

9 MR. GREEN: One moment.

10 No objection.

11 THE ARBITRATOR: It's admitted.

12 (Whereupon, Claimant's Exhibit U was
13 marked for identification and received
14 into evidence.)

15 MR. RICE: I have no further questions for
16 Mr. Goldenberg.

17 THE ARBITRATOR: Can I ask a question?

18 I'm unclear what your role was. You're a
19 consultant and CFO. Is that correct?

20 THE WITNESS: That's correct.

21 THE ARBITRATOR: Sounds to me like you're
22 running the show. What were you doing?

23 THE WITNESS: I was the most senior person on
24 premise. The company has a CEO and a president. The CEO
25 spends some time on technical matters because she's an

1 engineer. But basically on day-to-day business matters,
2 I'm the person that they look to.

3 THE ARBITRATOR: That's helpful to me. Thank
4 you.

5 I thought we'd go to 1:00 and maybe break for
6 lunch.

7 DIRECT EXAMINATION BY MR. GREEN:

8 MR. GREEN: Q. In your opinion,
9 Mr. Goldenberg, was Mr. Gottlieb terminated?

10 A. No.

11 Q. Why do you say that?

12 A. Because Mr. Gottlieb came to me and said he'd
13 like to move on.

14 Q. Was he more specific?

15 A. No.

16 Q. Was he, in your opinion, constructively
17 terminated?

18 A. No.

19 Q. Were his job duties taken away?

20 A. No.

21 Q. Was he able to still perform his duties even
22 though a number of subordinates were either terminated or
23 resigned?

24 A. Yes.

25 Q. How was he able to do that without the support?

1 A. The software that we had was, as I said
2 earlier, shop worn and had to be renewed. And we
3 undertook that renewal process, which Mr. Gottlieb and
4 another person had suggested or told me would cost about
5 \$60,000 and take three months. \$400,000 later and, I
6 guess, a year later, year and a half later, we're still
7 not there.

8 And so we could not do some of the things
9 economically that Mr. Gottlieb wanted to do like a press
10 tour, because there was no reason to do it until the new
11 software became available.

12 Mr. Gottlieb was asked to continue selling as
13 best he could given the quality of the product and to
14 work with people on renewing maintenance contracts. In
15 other words, continue his sales role and participate with
16 the overall management at Nacio.

17 He was invited and was part of every management
18 meeting. He contributed not only to the Attest side but
19 expressed opinions on the professional and on the systems
20 side, which are our other two divisions.

21 And aside from the fact that people were moved
22 around and we changed the entire structure of the
23 company, not just for Attest but also for the
24 professional services group, he was asked to continue
25 doing what he did best.

1 Q. Did he continue doing that?

2 A. I thought he did.

3 Q. Did he eventually leave the company?

4 A. Yes, he did.

5 Q. What was your understanding of the terms under
6 which he left the company?

7 A. He left the company with the request that he be
8 allowed to continue working for us as a consultant, which
9 we appreciated and paid him for. I always told Herb that
10 I liked him as an individual and thought highly of his
11 skills and wanted him to stay.

12 He chose to take a position with somebody that
13 I will call a competitor while he was still working for
14 us, which I disagreed with and told him I disagreed with.

15 Q. Let's go back to the commission payment that
16 you said was owed but not payable. Why is it not
17 payable, or when did it become payable?

18 A. Well, it was my understanding at the time we
19 did the documents, and it never really became an issue
20 until Herb was ready to leave, that one month out of 12
21 doesn't constitute a month in which all the commissions
22 that have been accrued should be payable.

23 And so I felt that we should have an average of
24 three months, four months, something that would make
25 sense. Not that he wouldn't earn the money. He would

1 continue to earn the money, but that we would only pay
2 it -- because cash flow was very critical, and we would
3 only pay the commissions when the cash is available.

4 Q. And is the cash available today?

5 A. No.

6 Q. Do you know when the cash will be available?

7 A. I'm meeting with some people this week. It's
8 supposed to be tomorrow, and I'm hoping that we're going
9 to be able to put a financing in place for Nacio in its
10 own right as opposed to Nacio's waiting for Encompass to
11 fund it. And it was my intention to generate some funds
12 out of that funding for Mr. Gottlieb, but I can't commit
13 to it until I know what the amount is and until it's a
14 done deal.

15 Q. Is it your intent that when the cash is
16 available that Mr. Gottlieb will be -- that when the
17 funds become available, then at that point then the
18 commissions do become payable and then Mr. Gottlieb will
19 be paid?

20 A. I don't believe they become payable, because
21 the division has never achieved an average \$60,000 even
22 for two months in a row. But in order to bring this to a
23 head and live up to our obligation, I want to pay him and
24 get him out of my hair.

25 ~~Q. So it's your position that because the \$60,000~~